Supreme Court of Pennsylvania.

JOHN DUFFY ET AL., ADM'RS. OF JOHN F. HARRISON, DECEASED, *vs.* CHARLES DUFFY.

The rule that there is no implied contract for compensation between parent and child, on the one part for maintenance and education and on the other for services, applies also between a child and a person assuming the relation of parent to it.

Though the father is bound to maintain his child, yet if the latter is taken and maintained by a relative without the father's previous request, though with his assent, there is no implied contract by the father to reimburse the relative for his expenses on the child's account.

A., on the death of his daughter, took her children home and maintained them, though their father was living. The father married again and died, when A. brought suit against his administrators for the maintenance: *held*, that under the relations of the parties, there was no implied agreement by the father to pay, and A. was not entitled to recover.

Error to the Common Pleas of Tioga county.

March 16th, 1863.—Opinion of the Court by

READ, J.—Judge LEWIS, in *Seibert's Appeal*, 7 Harris 56, says: "It was well urged in the argument by *Mansfield* and *Fonblanque* for the plaintiff in *Perry* vs. *Whitehead*, that the ground that the grandfather is not bound to provide for his grandchildren as a father is for a child, and the former is therefore not under the same moral obligation, would sound extraordinary out of a court of judicature, and certainly affords no reason. The statute of Elizabeth imposes the same moral obligation upon a grandfather and grandmother as upon the parents, which is the sense of the legislature and of mankind." 6 Ves. Jr. 546. "In Pennsylvania the grandfather as well as the father is required by the Act of 13th June 1836, § 28, to relieve and maintain his grandchildren when their necessities require it. This statute is in accordance with the moral sense of mankind. Those who suppose that infant children do not, upon the death of their parents, take the place of the latter in the affections of their grandfather, are strangers to the most ordinary manifestations of the best feelings of the human

heart. As the mementoes of the departed they have peculiar claims to his regard, and their unprotected helplessness, produced by the common bereavement, in most cases rivets his affection to them closer than they ever clung to their parent."

No truer words were ever uttered by the learned judge, and no commentary or paraphrase can add to the strength and beauty of his language. The legal obligations are well pointed out by Judge PARSONS, in a very learned opinion, in the *Guardians of the Poor* vs. *Smith*, 6 Penna. Law Journal 433.

A class of cases has been cited by the counsel for the plaintiffs in error, in which claims for compensation for services rendered have been rejected on account of the relations which the parties bore to each other. Such was the case of *Swires* vs. *Parsons*, 5 W. & S. 357, where a woman who had lived with a man as his wife sought to recover from his estate compensation for services performed in his lifetime. There the Court held that the relation between the parties repelled the idea of a contract. So in *Candor's Appeal*, Id. 513, it was held that a child is not entitled to recover wages for services rendered from the estate of the deceased parent, unless upon clear and unequivocal proof, leaving no doubt that the relation between the parties was not the ordinary one of parent and child, but of master and servant. The same doctrine was enunciated in *Defrance* vs. *Austin*, 9 Barr 309, where the claim was by an infant nephew against his uncle, and in *Lantz* vs. *Frey and Wife*, 2 Harris 201, where a stepdaughter claimed compensation for services rendered to her stepfather whilst living with him during her minority. So in *Lynn* vs. *Lynn*, 5 Casey 369, where a son brought a charge of boarding his mother against her estate.

The converse of the proposition was ruled in *Cummings* vs. *Cummings*, 8 Watts 366, where the claim was by the mother against her daughter for maintenance while an infant, the Court said the presumption from a mother's maintenance of a child, whatever be the means of either, is that she furnished it as a gift. In *Pelly* vs. *Rawlins*, Peake's Addit. Cases 226, it was held if a husband educate a wife's child by a former husband, he cannot recover compensation from such child when it comes of age. This

case is cited in Chitty, Jr., on Contracts, by Russell, 6th ed., pp. 48, 144, and he says in such cases no recovery can be had unless there be an express promise to repay him, which is also stated as the law in 1 Story on Contracts, § 82 f.

In *Williams* vs. *Hutchinson*, 5 Barbour 122, which was affirmed by the Court of Appeals in 3 Comstock 312, it was held that a stepfather is not entitled by law to the custody or services of the children of his wife by a former husband, nor is he bound to maintain them, but if he assumes the relation of a parent to such child, receives him into his family, supports and educates him, and there is no express agreement to pay wages to the stepchild, he cannot maintain an action against the stepfather for services rendered while a minor, although the value of the services may exceed the expenses of such education and support, and a promise to pay wages will not be implied. The whole reasoning of the Court proceeds upon a principle which would likewise exclude the stepfather from claiming any compensation for his expenditures for the stepchild. And this doctrine was expressly declared in *Sharp* vs. *Crosby*, 11 Barbour 224. This assumed relation of father entitles him on the one hand to the services of his stepchildren, and entitles them on the other hand to their support and education without remuneration. In *Chilcott* vs. *Kemble et al., Ex'rs.*, 13 Barbour 502, where a parent was willing to support his infant child, and a relative, without his request but with his assent, received the child into her family and supported it as a child of her own, it was held that no agreement of the father to pay for such support could be implied, and that the moral obligation of a parent to support his child imposes on him no liability to pay for its support furnished by a relative without his request.

That case was similar in its circumstances to the case now under consideration. The mother died, when the child, who was four months old, was taken by her grandparents. The father married a second time, and the child went back to him, but returned in a short time to her grandparents, with whom she lived until their death, and continued to reside with her uncle, who had been in the same house with his parents, and he furnished her with cloth-

ing and schooling, and she performed such services as are usually performed by girls of her age, such as housework, spinning, &c. There was evidence of declarations of the father, the testator, after the marriage of the daughter, that he was going to pay the uncle for keeping his child. The court, however, ruled as we have already stated, and also that as the evidence relied upon to prove an express promise referred to a time after the service was performed, the consideration was past and executed, and not sufficient to maintain an *assumpsit* unless moved by a precedent request. There is also a very strong case of *Eilet* vs. *Waller*, 2 Bradford 287, where it was held that there was no legal obligation on the intestate to compensate the uncle for the support of the child during the period she resided with him, he having made no demand on the father to assume the care of his daughter or to pay for her support.

In the present case, Mrs. Harrison, a daughter of the plaintiff, died on the 8th of June 1851, leaving eight children. Three of them, all girls, one six weeks old, another two years old, and the other four years old, were taken from the funeral of the mother by their grandparents, the plaintiff and his wife, to their house. Mr. Harrison married again, and died in 1855. Some time after the death of the intestate, the plaintiff presented to his administrators a claim of $690, for the boarding and clothing of these children.

There was no evidence of any previous request on the part of the father, nor any contract by him with the plaintiff, nor of any express promise on his part to pay, and only some declarations which, under the decisions, were of no weight or consequence. As the relation of the plaintiff and the children precluded the idea that there could be any implied agreement on the part of the father to pay, it was clearly error on the part of the Court to charge the jury *that in the absence of an agreement with the father not to charge,* the plaintiff was entitled to recover a reasonable compensation, the amount of which will be determined by the jury.

The very reverse of this would have been sounder law.

Judgment reversed, and *venire de novo* awarded.